

THE LEGEND OF JUDGE BAO AND THE CONFUCIAN IDEAL OF JUSTICE

E. A. Sarakaeva

Hainan college of Economics and Business

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Abstract: Judge Bao Zheng, nicknamed Bao the Dragon Seal or Bao the Pure Sky, who became famous in the 11th century AD for the fair and impartial conduct of judicial affairs, became over the centuries a model of an ideal Confucian official and a character in numerous works of fiction that codify his image as an ideal judge. Based on the legends and the artistic narrative about Judge Bao, the author analyses the Confucian vision of a fair trial. The author shows that under the Confucian value system, a judge does not need to be particularly clever and insightful – it is enough to be fair, incorruptible and to love the common people, and everything else, according to Confucian ideas, is done for him by Heaven and people drawn to him by the power of his virtue.

Key words: Bao Zheng, Confucian worldview, judicial procedure in medieval China, ideal judge, "Three Heroes and five Gallants", corpus of legends about Judge Bao.

In many cultures there are legends, folkloric or literary, about the investigation of mysterious crimes and just punishment of criminals. The core image of such legends there is always a figure of a brilliant and impartial detective or judge. There are two such figures in Chinese culture: Judge Di, whose literary and cinematographic image is based on the real-life 10th-century official Di Renjie, and Judge Bao, a real life official turned legendary character, whose deeds are attributed to the Song dynasty, around the 12th century. But while Di Renjie as a literary character first appeared under the pen of the European writer Robert Van Gulik and reflects the European understanding of crime and punishment superimposed on the Chinese realities, Judge Bao, Bao Zheng nicknamed Dragon Seal or Pure Heaven, is truly flesh and blood of the Chinese culture and the Chinese worldview. In this work I will explore the Confucian vision of a fair trial based on the image of this legendary judge.

But I will start with a short historical reference.

Bao Zheng (999 – July 3, 1062) was a famous minister of the Northern Song Dynasty. In the fifth year of Tiansheng (1027), Bao Zheng was admitted to the Imperial Academy. He was promoted to the position of imperial historian and

was made responsible for the training of soldiers and the selection of generals, which would surprise modern readers, for he has never been a military himself. This kind of civil service was, as I believe, part of a government's attempt to control the army commanders through civil ministers. Later Bao Zheng served as a judge of the Household Department, then he joined the court as a deputy envoy where he became known as one of initiators of free salt trading. Then he was in charge of the "admonishing court" – a unique and ever dangerous position that the Chinese governmental system worked out to balance tyranny. To put it simply, his job was to point out the Emperor's mistakes and to criticize the courtiers. Bao Zheng took his appointment in earnest and repeatedly impeached the powerful. In 1061, he was promoted to the position of Deputy Counsellor. In the seventh year of Jiyou (1062), Bao Zheng died at the age of 64. He was posthumously awarded the title of Minister of Rites and given the posthumous title of "Xiaosu".

Bao Zheng was renowned for his honesty and impartiality, his perseverance, wisdom and determination, and his willingness to seek justice for the common people. Later generations worshiped him as a deity, believing him to be the reincarnation of a god Kui Xing¹, he was called Bao Gong, the last word meaning literally "a prince" but used when referring to deities.

Bao Zheng is the protagonist of several cycles of literary works, including many short stories of the Ming period (XIV–XVII centuries) and theatrical plays, but the present canon of information about him is formed in the famous adventure novel of the XIX century "Three heroes and five gallants" by the storyteller Shi Yūkun. Numerous novels, films, and television series about the adventures and investigations of Judge Bao and his faithful assistant knights enjoy unceasing interest of modern Chinese audience.

But before discussing the the semantic and value contents of Bao Zheng's image, let us briefly observe the system of investigative and judicial power in traditional China. Bao Zheng, according to the canon, is the head of the metropolitan government. And since in China the functions of criminal investigation and judicial proceedings were never separated from the general administrative duties of local officials, we must assume that Judge Bao's official functions included collecting taxes, organizing works, mobilizing recruits, and much more, but the short stories and novels do not say a word about this. Bao Zheng appears to the reader in only one capacity, as an investigator and judge. But his investigations often take place not only in the capital city of Kaifeng, but all over the country.

In practice, the organization of the investigation and trial was as follows: a plaintiff or any person who wanted to report a crime came to the local official's

¹ Youd D. M. Beyond Bao. Moral Ambiguity and the Law in Late Imperial Chinese Narrative Literature // Writing and Law in Late Imperial China. Crime, Conflict, and Judgment / R. E. Hegel & K. Carlitz. Seattle & London, 2007. P. 216.

office and beat on a large drum, specially placed in front of the gate for this purpose. At that sound, the gates of the office would open, and anyone who wished to do so could go inside to attend the public hearing. The plaintiff would kneel before the judge and state his complaint. The judge summoned suspects and witnesses to the board, and the guards of the board, led by one or more officers, were sent to fetch them. The head of the police department conducted interrogations relying, in the absence of any forensic methods, mainly on the testimony of neighbours (which was quite a working tool considering extremely dense buildings and crowded housing), on his own understanding of human psychology, on intimidation of suspects, and, in exceptional cases, on torture.

A distinctive feature of the Chinese judicial system was that law enforcement was in the hands of people who had not studied the law. The fact is that positions in old China were filled by people who had successfully passed state examinations, so officials were, as a rule, erudites and intellectuals. However, the examination material did not include numerous codes and statutes, being limited for the most part to Confucian philosophical and moral-political treatises. To help officials understand legal complexities, the offices had so-called “scribes” whose duties included writing down the protocols of court procedures, and, most importantly, advising the chief on all legal matters and helping to organize investigations².

In Shi Yükun's novel *Judge Bao* is surrounded by a galaxy of gifted assistants, his clerk Gongsun is a man of rare observation and intelligence, his officers are the powerful swordsman Zhang Zhao and other famous fighters³. Judge Bao does not need to waste time and energy looking for and selecting these assistants, they come to him on their own and express a desire to serve him. In the same way, without any particular effort on Bao Zheng's part, witnesses of crimes appear before him to give evidence. Even spirits of dead people come by themselves to report their violent deaths and ask for justice.

This feature is not only typical to Shi Yükun's author style: in other works of fiction about Judge Bao the hero always receives hints from Heaven. Sometimes crows would sit on the roof of his house to lead him to the right place for his investigation, sometimes he would find papers with a game of words, which encrypts the answer to an important question. I believe that the authors of short stories and novels do not simply make life easier for their hero – no, they express their inner, based on the Confucian worldview, confidence that the humane and virtuous man is favoured by the very Heaven, so the Heaven does not leave him without help: “As water always flows downwards, this is its nature, so people always obey the humane ruler, this is their nature”. Under

² *Hegel R. E. The Art of Persuasion in Literature and Law // Writing and Law in Late Imperial China. Crime, Conflict, and Judgment / R. E. Hegel & K. Carlitz. Seattle & London, 2007. P. 81–106.*

³ *Shi Yu-Kun. Three heroes and five gallants. Moscow, 1974.*

the Confucian system of values, a judge does not even need to be particularly clever and shrewd – it is enough to be just, incorruptible and love the common people. Then Heaven and the people, drawn to him by the power of his virtue, will do the rest for him.

Another peculiar feature of Bao's image is the unusual circumstances of his birth and childhood: he was born of an already too old mother and had very dark skin. His father was frightened, believing that the child would become a great villain and ruin the whole family, so he ordered him to be thrown into the wildness to be eaten by wild beasts. Three days later, the baby's elder brother accidentally saw the baby being cared for and warmed by a tigress, and took it for the sign from above. He carried the baby back to his own home and brought him up as his own son. The story is reminiscent of the popular story of a miraculous baby, whose birth was accompanied by some miraculous apparitions. There are such tales in China as well, and always the child in question grows up to become either a cultural hero (like Hou Ji, the Prince of Grain, who taught his people farming) or a great conqueror and founder of a dynasty (as, for example, the first emperor of the Han dynasty, Liu Bang). It is only in the case of Bao Zheng that the child, having grown up, becomes simply an honest and wise judge. And this may speak to the profanity of the story itself, its relegation to a mere entertainment twist. Or rather it signifies the highest public demand for incorruptibility and professionalism of the administration, the explanation which I find more relevant.

I chose the second of these interpretations, because for the Qing period society and state, when the corpus of texts on Justice Bao was finally formed, the most important problem was the corruption of administrations. Corruption was woven into the very fabric of the Qing Chinese civil service; it was not an ugly distortion, but the core of an official career. The Qing officials simply did not receive sufficient funding to carry out their direct duties, and were forced to regularly impose additional extortions on the population and their subordinates⁴. And of course, in such an atmosphere, it was virtually impossible not to take money for themselves personally and give it as bribes to the higher-ranking officials.

The writers of the time were well aware of this situation. In the great realist novels of the Qing era, "The Dream in the Red Chamber" and "The Unofficial History of the Confucians", there are episodes – one in each novel – describing a newly appointed official who decides to be honest and not take bribes. As a result, the honest official becomes an enemy of the entire official corps, almost all the officials and guards leave him, so he is still forced to let those who remain take bribes in a limited amount. Yet everyone hates him, and in the end, he is accused of improper performance of duties and dismissed from

⁴ Park N. E. Corruption in Eighteenth-century China // The Journal of Asian Studies. 1997. 56, № 4. P. 967–1005.

service. This man is portrayed by the authors without any sympathy, as a weak romantic fool who has neither kept his honour nor his place⁵. So deep and so far goes the corruption of the system, that it's not possible to fulfil one's duty without being corrupt.

The corpus of stories about Judge Bao, however, somehow sidesteps this theme altogether: how did Bao Zheng manage to rise so high with complete crystal-clear integrity, how could he get his men to serve him, if not for money, why was he not hated by his fellow officers and superiors? One can, of course, explain this by the difference in genres: serious realist novels vs. entertainment literature, and/or the difference in audience: the educated elite who knew how the official world really works vs. the non-elite audience.

But one can also look deeper, at the difference in values. "The Unofficial History" and "Dream in the Red Chamber" are works of principle anti-Confucianism. In the world they describe there is no hope and cannot be hope for improvement through active civic service, the only salvation is transcendence, a way out of the vicious circle in general. The image of Judge Bao, though, is a product of the Confucian worldview. Although the legends of Bao are filled with apparitions, spirits and other miracles, salvation from social evil and suffering is represented as social good, and the way to achieve harmony is actively pursuing one's duty – a core Confucian idea. Besides, in accordance with Confucian anthropology, the cause of all evil in society is seen not as a wrong organization of society itself, but as a lack of virtue in those in power. With a certain simplification I can say that for the Confucian mentality the cause of corruption is not that the official is put in such conditions when he cannot not take bribes, but exclusively in the evil direction of his will, that he is not honest or well mannered, or unenlightened by virtue of a higher official or the sovereign personally. Judge Bao, with his honesty and inability to compromise, is therefore not just a man who has overcome the disease of his age and surroundings, he himself is the cure for this disease, a kind of Messiah of the official world, by whose example others are correcting their ways. "Governance is correction", as Confucius once formulated the essence of service to the state.

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⁵ *Cao Xueqin*. The Dream of the Red Chamber. Hangzhou : Tuttle Classics, 2010. And also: *Wu Zingji*. Der Weg zu den Weißen Wolken. Geschichten aus dem Gelehrtenwald. Beijing : Chinese Foreign Language Publishing House, 2015.

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Information about author

Sarakaeva Elina Aliyevna – Assistant Professor of the Department of Russian Language of the Faculty of Humanities of Hainan College of Economics and Business (People's Republic of China, Haikou), Candidate of Philological Sciences

E-mail: 2689655292@qq.com